

1 ENERGY AND ENVIRONMENT CABINET

2 Department for Environmental Protection

3 Division of Waste Management

4 (New Administrative Regulation)

5 401 KAR 42:045. Delivery Prohibition.

6 RELATES TO: KRS 224.10, 224.60, 40 C.F.R. Part 280 Subpart C, 42 U.S.C. 6991c

7 STATUTORY AUTHORITY: KRS 224.10-100, 224.60-105, 42 U.S.C. 6991k, 42

8 U.S.C. 6991e

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.60-105 requires the
10 cabinet to establish a program for regulating underground storage tanks that implements the
11 federal regulatory requirements for underground storage tanks. 42 U.S.C. 6991k establishes the
12 parameters for delivery prohibition for underground storage tank systems. This administrative
13 regulation establishes the procedures for invoking delivery prohibition for an underground
14 storage tank system.

15 Section 1. Applicability. This administrative regulation shall not apply to a regulated
16 underground storage tank used to fuel emergency backup generators.

17 Section 2. Delivery Prohibition for UST Systems. (1) The cabinet shall determine that a
18 UST system is ineligible for delivery, deposit, or acceptance of regulated substances upon
19 confirmation of one (1) or more of the following conditions:

20 (a) In accordance with 401 KAR 42:020, 42:030, and 42:040, required spill prevention
21 equipment is not installed, operational, or maintained;

1 (b) In accordance with 401 KAR 42:020, 42:030, and 42:040, required overfill prevention
2 equipment is not installed, operational, or maintained;

3 (c) In accordance with 401 KAR 42:020 and 42:030, required corrosion protection
4 equipment is not installed, operational, or maintained;

5 (d) In accordance with 401 KAR 42:040, required release detection is not performed;

6 (e) In accordance with 401 KAR 42:020 and 42:040, required release detection
7 equipment is not installed, operational, or maintained; or

8 (f) A defective UST system component, confirmed by UST system testing or visual
9 observation by the cabinet, and for which the owner or operator has not documented a repair or
10 replacement, has:

11 1. Caused a release of a regulated substance into the environment; or

12 2. Allowed a regulated substance to infiltrate into the interstitial space of the UST system.

13 (2) Upon a determination by the cabinet that a condition described in subsection (1) of this
14 section exists, the cabinet shall issue a Notice of Violation to the UST system's owner or operator.

15 (3) The Notice of Violation shall serve as notice to the owner or operator of the cabinet's
16 intent to invoke delivery prohibition for the UST system if the violation is not corrected within the
17 time frame established in writing by the cabinet.

18 (4) Upon failure by the owner or operator to correct the violation of a condition in
19 subsection (1) of this section, cited in the initial Notice of Violation, or to request an extension, in
20 accordance with Section 3 of this administrative regulation, a second Notice of Violation shall be
21 issued.

1 (5) Upon issuance by the cabinet of the second Notice of Violation, delivery prohibition
2 shall be invoked and an authorized representative of the cabinet shall attach a delivery prohibition
3 tag to the non-compliant UST system.

4 (6) An owner or operator shall ensure that a delivery prohibition tag is not removed,
5 defaced, altered, or destroyed.

6 (7) An owner or operator shall not allow the delivery, deposit, or acceptance of regulated
7 substances into a UST system for which the cabinet has invoked delivery prohibition, unless
8 otherwise directed in writing by the cabinet for the purpose of UST system testing.

9 (8) An owner or operator shall notify the appropriate product deliverer when delivery
10 prohibition has been invoked.

11 (9) Delivery prohibition shall remain in effect until the cabinet determines that the non-
12 compliant UST system is returned to compliance for the violation that caused delivery prohibition
13 to be invoked in accordance with subsection (1) of this section.

14 (10) The cabinet shall determine whether a UST system is authorized to accept deliveries
15 within two (2) business days (Monday through Friday) of receipt of written notice from the owner
16 or operator that the remedial measures established in the Notice of Violation related to subsection
17 (1) of this section have been met.

18 (11) Upon a determination by the cabinet that the violation has been corrected, the cabinet
19 shall terminate delivery prohibition and remove an affixed delivery prohibition tag within two (2)
20 business days (Monday through Friday).

21 (12) If the Division director, or his designee, determines, in writing, that delivery
22 prohibition at a UST facility would jeopardize the availability of, or access to, motor fuel in a
23 rural and remote area, the cabinet may defer the application of delivery prohibition for a UST

1 system, with reference to (a), (b), (c), (d) or (e) of subsection (1) of this section, for a period not
2 to exceed forty-five (45) days.

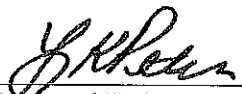
3 Section 3. Extensions. (1) The owner or operator of a UST system may request an
4 extension to a deadline established by this administrative regulation or established by the cabinet
5 in writing pursuant to this administrative regulation.

6 (2) The extension request shall be submitted in writing and received by the Division of
7 Waste Management prior to the deadline.

8 (3) The cabinet may grant an extension, if the cabinet determines that an extension would
9 not have a detrimental impact on human health or the environment.

401 KAR 42:045 approved for filing.

4/14/11
Date


Leonard K. Peters, Secretary
Energy and Environment Cabinet

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on May 24, 2011 at 10:00 A.M. (Eastern Time) at 300 Fair Oaks, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by May 17, 2011, five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until May 31, 2011. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Cassandra Jobe
Division of Waste Management
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Email: Cassandra.Job@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Cassandra Jobe

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the procedures for invoking delivery prohibition for an UST system.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the procedures for delivery prohibition for UST systems.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms to the content of the authorizing statutes by establishing delivery prohibition procedures for USTs in accordance with the Energy Policy Act of 2005.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation will assist in the effective administration of the statute by establishing the procedures for delivery prohibition.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable

(b) The necessity of the amendment to this administrative regulation: Not applicable

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable

(d) How the amendment will assist in the effective administration of the statutes: Not applicable

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

There are approximately 3,700 registered UST facilities in Kentucky.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

None. This is procedures for the cabinet to follow for invoking delivery prohibition.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no cost to the regulated entity other than compliance costs associated with other regulation within 401 KAR Chapter 42.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Not applicable

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

There will be no additional cost to the agency to implement this administrative regulation.

(b) On a continuing basis:

There will be no additional cost to the agency to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Tank fees and US EPA grants will be used to fund implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

A fee increase will not be necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

This administrative regulation does not establish or affect fees.

(9) TIERING: Is tiering applied? (Explain why or why not)

Tiering is not applied. Delivery prohibition procedures are the same for all UST systems.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 401 KAR 42:045

Contact Person: Cassandra Jobe

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes X No

If yes, complete questions 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Division of Waste Management

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

42 U.S.C. 6991k, 42 U.S.C. 6991e; KRS 224.60-105

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

This administrative regulation will not generate revenue.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

This administrative regulation will not generate revenue.

(c) How much will it cost to administer this program for the first year?

It will not cost the agency any additional money to implement the program.

(d) How much will it cost to administer this program for subsequent years?

It will not cost the agency any additional money to implement the program.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.

42 U.S.C. 6991k, 42 U.S.C. 6991e

2. State compliance standards.

KRS 224.60-105

3. Minimum or uniform standards contained in the federal mandate.

42 U.S.C. 6991k, 42 U.S.C. 6991e

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

Not applicable